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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/586,006

12/11/2006

Heiner Sann

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Ballard Spahr LLP

SUITE 1000

999 PEACHTREE STREET

ATLANTA, GA 30309-3915

EXAMINER

FAYYAZ, NASHMIYA SAQIB

ART UNIT

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/586,006	<b>Applicant(s)</b> SANN ET AL.	
	<b>Examiner</b> Nashmiya S. Fayyaz	<b>Art Unit</b> 2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-12 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson-US Patent # 3,986,401. As to claim 1, Peterson discloses a composite sampling system and method including non-return valve element (inlet valve 22b) within sampling probe (sampler 30) for taking a sample (hatchery effluent), valve 22b being opened by negative pressure from pump 14, a supply line (egress 38 and passageway 36) to convey a gas(air), a discharge line (tube 26 or tube 20), see figs. 1-3 and col. 3, lines 13 et seq. It is noted that a container is not depicted by Peterson. Peterson does indicate sampling from a high velocity effluent or a "static" fluid, see col. 3, lines 2- 27. Therefore, since fluids are being sampled, it would have been obvious to one of ordinary skill in the art at the time of the invention to have recognized that some form of container would be required to hold the fluid prior to sampling. As to claim 2, note second container (chamber 30). As to claim 3, note figs. 2 and 3. As to claim 4, note fig. 1 showing the various lines. As to claim 5, note col.4, lines 17-

26. As to claim 6, note pump 14. As to claim 7, the first container could also be the housing 12 since it contains the medium also and as such, have an outer wall which can be considered a “sheathing” which can control the temperature of the whole apparatus. As to claim 8, the air allowed in could be considered as heating or cooling. As to claim 9, note conveying line (egress 38). As to claim 10, note ball valve 40 and ball valve 46 “in the region” of line 38. As to claim 11, since the ball 40 moves in response to a negative pressure, it can be considered pressure sensor. As to claim 12, usage of a filter to eliminate outside particulates from entering is considered to have been a clear matter of design choice since air is drawn directly into the sample chamber and contaminants would be undesirable. As to claim 18, note rejection above pertaining to claim 1 and further note col. 4, lines 5 et seq for the operation.

3. Claims 13-17, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson in view of Shook-US Patent # 2,434,723. As to claims 13-17, 19 and 20, Peterson lacks a teaching for a rinsing fluid being sent through the sampler. In a related prior art device, Shook also teaches sample collection instrument 2 in which it is indicated that the instrument is flushed or washed with a wash fluid through branch 35, see col. 2, lines 50 et seq. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have included a rinse fluid line/container etc. in the device

of Peterson in order to wash out contaminants and excess materials as taught by Shook.

***Response to Arguments***

4. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nashmiya S. Fayyaz whose telephone

number is 571-272-2192. The examiner can normally be reached on Tuesdays and Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron E. Williams can be reached on 571-272-2208. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/N. S. F./  
Examiner, Art Unit 2856

/Hezron Williams/  
Supervisory Patent Examiner, Art Unit 2856